IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.08.2006

Coram :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

Writ Petition Nos.17247 of 1998 and 4477 of 2001

W.P.No.17247 of 1998:

Dunlop India Limited
Ambattur
Chennai - 600 053. ... Petitioner

v.

1.The Tahsildar
Ambattur
Chennai - 600 053

2.The Principal Commissioner
(Urban Land Tax)
Ezhilagam
Chennai - 600 005

3.Village Administrative Officer
18, Ambattur village
Ambattur
Chennai - 600 053. Respondents

W.P.No.4477 of 2001:

Dunlop India Limited
M.T.H.Road
Ambattur
Chennai - 600 053. .. Petitioner

Vs.

1.The Zonal Deputy Tahsildar
Ambattur Taluk, Ambattur
Chennai - 600 053

2.The Village Administrative Officer
18, Ambattur village, Ambattur Taluk
Ambattur, Chennai - 600 053. ... Respondents.

Writ petitions filed under Article 226 of the Constitution o
India for the issue of writ of certiorarified mandamus as state
therein.

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For Petitioners : Mr.M.Vijayan for
in both the petitions M/s.King & Patridge

For Respondent : Mr.S.Rajasekar,G.A.
in both the petitions

ORDER

The writ petition in W.P.No.17247 of 1998 is filed seeking for the relief of issuance of writ of certiorarified mandamus to call for the records of the first respondent in R.C.Pd1 No.4/98/A4 dated 8.9.1998, quash the same and forbear the respondents from initiating distress proceedings against the petitioner company declared as "Sick Industry" by the Board for Industrial and Financial Reconstruction (hereinafter referred to as "BIFR").

2. The writ petition in W.P.No.4477 of 2001 is filed seeking for the relief of issuance of writ of certiorarified mandamus to call for the records of the first respondent, culminating to the impugned distraint order dated 2.2.2001 initiating distress recovery proceedings for recovery of Rs.22,94,080/- towards the Urban Land tax for the period from fasli 1405 to fasli 1410, quash the same and direct the respondents, to forbear from initiating distress proceedings against the petitioner company declared as "Sick Industry" by the BIFR.

3. The petitioner is a company assessed to urban land tax by the proceedings of the Tahsildar, Ambattur dated 8.9.1998 for a sum of Rs.1,38,816/- in respect of fasli 1407 and for a sum of Rs.3,38,816/- for the fasli year 1408 i.e., Rs.4,77,632/- in total and by order dated 2.2.2001, the Zonal Deputy Tahisldar, Ambattur Taluk initiated distraint revenue recovery proceedings for recovery of a sum of Rs.22,94,080/- in respect of the faslies 1405 to 1410 i.e., including the above said amount of Rs.4,77,632/-.

4. It is the case of the petitioner in both the writ petitions that in as much as the petitioner Company was declared as a sick industry by the BIFR, New Delhi by order dated 7.7.1998 under the provisions of the Sick Industrial Companies (Special Provisions) Act 1985 (hereinafter referred to as "the Act"), wherein the Government of Tamil Nadu is also a party and the said proceedings are now pending before the BIFR, the recovery proceedings cannot be initiated in view of Section 22 of the Act.

5. It is an admitted case of either side that the BIFR formulated a scheme for the rehabilitation of the petitioner Company and the same is under implementation and the petitioner company is reviving gradually.

6. Whether the respondent State Government can recover the urban land tax from the petitioner without obtaining prior permission from

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the BIFR, when the sanctioned scheme is under implementation unde Section 22 of the Act, is the question involved in these wri petitions. The question is no more res integra as the Supreme Court i the case of THE GRAM PANCHAYAT AND ANTOEHR VS. SHREE VALLABH GLAS WORKS LIMITED AND OTHERS reported in AIR 1990 SUPREME COURT 1017 while considering the scope of Section 22 of the Act, has held tha it might be against the principles of equity if the creditors are no allowed to recover their dues from the company, but such creditors ma approach the Board for permission to proceed against the company fo the recovery of their dues/outstandings/overdues or arrears b whatever name it is called. The Board at its discretion may accord it approval for proceeding against the company. If the approval is no granted, the remedy is not extinguished. It is only postponed. Sub section (5) of Section 22 provides for exclusion of the period durin which the remedy is suspended while computing the period of limitatio for recovering the dues.

7. Subsequently, the Supreme Court in the case of TATA DAVY LTD VS. STATE OF ORISSA AND OTHERS reported in (1997) 6 SCC 669, has als re-affirmed the above judgment of the Supreme Court. Hence, th demand, which is impugned in these writ petitions, cannot be allowe to be proceeded further without the prior permission of the BIFR fo recovery of the amount from the petitioner company for which sanctioned scheme is under implementation.

8. Hence, the writ petitions are allowed. However, there is n order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Tahsildar
Ambattur
Chennai - 600 053

2.The Principal Commissioner
(Urban Land Tax)
Ezhilagam
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18, Ambattur village
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4.The Zonal Deputy Tahsildar
Ambattur Taluk, Ambattur
Chennai - 600 053

5.The Village Administrative Officer
18, Ambattur village, Ambattur Taluk
Ambattur, Chennai - 600 053.

2 CCS TP M/S KING & PATRIDGE, ADVOCATE (SR NOS 37708 & 37709)

1 CC TO SPL.G.P., (TAXES), CHENNAI (SR NO 37836)

WP.Nos.17247 of 1998 and 4477 of 2001

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